

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 228/98.

Date of Decision : 24.08.1998.

Subhashchandra Rai. Petitioner.

Shri M. S. Ramamurthy, Advocate for the Petitioner.

VERSUS

Union Of India & Others. Respondents.

Shri V. S. Masurkar, Advocate for the Respondents.

CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

(1) To be referred to the reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 228/98.

Dated this Monday, the 24th day of August, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Subhashchandra Rai,
L.H.F., Fire Brigade,
N.A.D. Trombay.

Residing at -

... Applicant

Room No. 10, Bldg. No. 12,
4th Floor, N.A.D. Colony,
Mankhurd.

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Defence,
Government of India,
North Block,
New Delhi - 110 001.

2. Flag Officer Commanding-in-
Chief, Headquarters
Western Naval Command,
Shahid Bhagatsingh Marg,
Mumbai - 400 001.

... Respondents.

3. The General Manager,
Naval Armament Depot,
Trombay, Mumbai - 400 088.

4. Commodore,
(Estate Officer),
Bureau of Sailors,
Cheetah Camp, Mankhurd,
Mumbai - 400 088.

(By Advocate Shri V. S. Masurkar)

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OPEN COURT ORDER

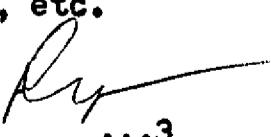
(PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN)

This application is filed challenging the order of cancellation of allotment dated 22.01.1998. Respondents have filed reply. Since the point involved is short, we have heard the learned counsels appearing on both sides on merits of the application and disposing of the O.A. at the admission stage itself.

2. Admittedly, the applicant is an allottee of a Government quarter and he is residing there. The allotment came to be cancelled by the respondents on the ground that the applicant's son was involved in a criminal case. Being aggrieved by the order of cancellation of allotment, the applicant has approached this Tribunal. The applicant's grievance is that, without hearing him and without issuing any show cause notice, the respondents have cancelled the allotment and, therefore, it is bad in law.

3. In the reply, the respondents have pleaded that the applicant's son was involved in a criminal case and the competent authority has passed the impugned order of cancellation of allotment. According to the respondents, there is no provision for holding any enquiry or issuing a show cause notice at the stage of cancellation of allotment.

4. It is true that under the rules there is no specific provision to issue a show cause notice or holding an enquiry before cancelling allotment. However, cancellation of allotment entails civil consequences like eviction of the applicant and liability to pay damage rent, etc.


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Here the cancellation of the allotment is not on the ground of applicant's retirement or applicant's transfer where no show cause notice may be necessary. Here the applicant's allotment is cancelled on a serious ground, namely - that his son is involved in a criminal case. In such a case, we feel that principles of natural justice ^{are} ~~is~~ required. The applicant should be informed by a show cause notice by giving reasons and asking ^{him} why the allotment should not be cancelled. Then, after hearing the applicant's reply to the show cause notice, the competent authority could pass appropriate orders according to law. That is the view this Tribunal has taken in an earlier identical case in the order dated 30.04.1998 in O.A. No. 127/98. In our view, in view of the reasoning given in that order, even in the present case, the impugned order of cancellation of allotment should be set aside with liberty to the competent authority to issue show cause notice in which he should mention the grounds for coming to a tentative conclusion as to why the allotment should not be cancelled and after hearing the reply of the applicant, to pass a final order according to law.

5. The Learned Counsel for the respondents, however, tried to distinguish the previous orders on two grounds. The first is, ^{that} though the applicant had later given a representation to the higher authority where he has mentioned the reasons and the higher authority has rejected the request of the applicant for cancellation of allotment. This is a post-decision matter, for we are concerned with a pre-decision matter.

The question is, whether the allotment can be cancelled on a ground of alleged misconduct without hearing the official. Therefore, the subsequent correspondence between the applicant and the higher officer is not relevant for our present purpose. Another ground pointed out by the Learned Counsel for the respondent is that, on the basis of the cancellation of allotment, the respondents have already initiated proceedings against the applicant under the Public Premises Act.

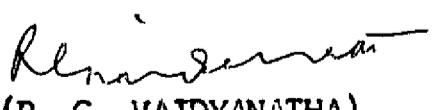
^{With} Even ^{that} proceedings, we are not concerned about ~~in~~ in the present case. We are only concerned about the cancellation of the allotment without hearing the applicant.

For the reasons already mentioned and in view of the earlier order passed by the Division Bench in O.A. No. 127/98, we hold that the cancellation of allotment is bad in law and liable to be set aside.

6. In the result, the application is allowed. The order of cancellation of allotment dated 22.02.1998 is hereby set aside. However, this order is without prejudice to the right of the competent authority to issue show cause notice to the applicant about the proposed cancellation of allotment mentioning the ground and then, after hearing the reply of the applicant to pass appropriate order according to law. All contentions on merit are left open on both sides. In the circumstances of the case there will be no order as to costs.


(D. S. BAWEJA)

MEMBER (A)


(R. G. VAIDYANATHA)

VICE-CHAIRMAN.